

110TH CONGRESS
2D SESSION

H. R. 5892

IN THE SENATE OF THE UNITED STATES

JULY 31, 2008

Received; read twice and referred to the Committee on Veterans' Affairs

AN ACT

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to modernize the disability benefits claims processing system of the Department of Veterans Affairs to ensure the accurate and timely delivery of compensation to veterans and their families and survivors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Veterans Disability Benefits Claims Modernization Act
 6 of 2008”.

7 (b) **TABLE OF CONTENTS.**—The table of contents for
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

TITLE I—MATTERS RELATING TO MODERNIZING THE DIS-
ABILITY COMPENSATION SYSTEM OF DEPARTMENT OF VET-
ERANS AFFAIRS

Sec. 101. Office of Survivors Assistance.

Sec. 102. Study on readjustment of schedule for rating disabilities.

Sec. 103. Study on employee work credit system of Veterans Adminis-
 tration.

Sec. 104. Study on work management system.

Sec. 105. Certification and training of employees of Veterans Adminis-
 tration responsible for processing claims.

Sec. 106. Annual assessment of quality assurance program.

Sec. 107. Expedited treatment of fully developed claims and requirement for
 checklist to be provided to individuals submitting incomplete
 claims.

Sec. 108. Study and report on employing medical professionals to assist em-
 ployees of Veterans Benefits Administration.

Sec. 109. Assignment of partial disability ratings to qualifying veterans.

Sec. 110. Review and enhancement of use of information technology at Vet-
 erans Benefits Administration.

Sec. 111. Treatment of claims upon death of claimant.

TITLE II—MATTERS RELATING TO UNITED STATES COURT OF
APPEALS FOR VETERANS CLAIMS

Sec. 201. Annual reports on workload of United States Court of Appeals for
 Veterans Claims.

Sec. 202. Modification of jurisdiction and finality of decisions of United States
 Court of Appeals for Veterans Claims.

9 **SEC. 2. FINDINGS.**

10 Congress makes the following findings:

1 (1) At the end of fiscal year 2007, there were
2 nearly 24,000,000 veterans in America.

3 (2) According to the latest Annual Report from
4 the Veterans Benefits Administration, there were
5 3,582,255 veterans and survivors receiving com-
6 pensation and pension benefits under laws adminis-
7 tered by the Secretary of Veterans Affairs at the end
8 of fiscal year 2006.

9 (3) The number of veterans and survivors at
10 the end of fiscal year 2006 included 2,725,824 vet-
11 erans receiving service-connected disability benefits,
12 325,939 survivors receiving service-connected death
13 benefits, 329,856 veterans receiving non-service-con-
14 nected disability benefits, and 200,636 survivors re-
15 ceiving non-service-connected death benefits.

16 (4) During fiscal year 2006, almost 250,000
17 beneficiaries began receiving benefits with 162,805
18 of these being veterans whose compensation claims
19 were granted.

20 (5) Since October 7, 2001, the number of
21 claims for new or increased benefits has risen sharp-
22 ly, exceeding 838,000 in 2007.

23 (6) The Department of Veterans Affairs
24 projects that the number of claims will surpass
25 1,000,000 by the end of fiscal year 2008.

1 (7) The number of disability compensation
2 claims pending before the Department stands at
3 nearly 630,000, as of the date of the enactment of
4 this Act, about a quarter of which have been back-
5 logged for over six months.

6 (8) Processing times have increased from an av-
7 erage of 177 days in 2006 to 183 days in 2007.

8 (9) The paper-based, labor-intensive process
9 employed by the Department leaves many disabled
10 veterans and survivors waiting months or years to
11 receive the benefits they have earned.

12 (10) The most prevalent disabilities among vet-
13 erans that are service-connected are auditory, with
14 almost 840,000 veterans receiving compensation for
15 such a disability, followed by musculoskeletal disabil-
16 ities and arthritis.

17 (11) Post-traumatic stress disorder is the sixth
18 most common disability, with more than 269,399
19 service-connected veterans.

20 (12) In 2006, the Veterans Health Administra-
21 tion treated 345,713 veterans with post-traumatic
22 stress disorder, which was an increase of 27,099
23 over 2005.

24 (13) By January 2008, of the 1,600,000 vet-
25 erans who served in the Armed Forces after October

1 7, 2001, the Veterans Health Administration had
2 treated 59,838 for post-traumatic stress disorder.

3 (14) Disabilities are evaluated in accordance
4 with the Department of Veterans Affairs Schedule
5 for Rating Disabilities (referred to in this section as
6 the “VASRD”) under title 38, United States Code
7 of Federal Regulations, part 4.

8 (15) This schedule was originally created in
9 1917 and was last comprehensively revised in 1945.

10 (16) The VASRD contains many outdated and
11 archaic criteria and lacks more commonly accepted
12 medical practices and procedures.

13 (17) Studies conducted by the Institute of Med-
14 icine found it to be an inadequate instrument for
15 compensating disabilities for the average impair-
16 ments of earning capacity, especially in areas of
17 mental health, unemployability, and for younger and
18 severely injured veterans, and recommended it be re-
19 vised using more modern medical concepts.

20 (18) The Department of Veterans Affairs must
21 modernize the claims processing system of the Vet-
22 erans Benefits Administration to make it a first-
23 class, veteran-centered system that uses 21st cen-
24 tury technologies and paradigms and reflects the

1 dignity and sacrifices made by disabled veterans,
 2 their families, and survivors.

3 **TITLE I—MATTERS RELATING**
 4 **TO MODERNIZING THE DIS-**
 5 **ABILITY COMPENSATION SYS-**
 6 **TEM OF DEPARTMENT OF**
 7 **VETERANS AFFAIRS**

8 **SEC. 101. OFFICE OF SURVIVORS ASSISTANCE.**

9 (a) IN GENERAL.—Chapter 3 of title 38, United
 10 States Code, is amended by adding at the end the fol-
 11 lowing new section:

12 **“§ 321. Office of Survivors Assistance**

13 “(a) ESTABLISHMENT.—The Secretary shall estab-
 14 lish in the Veterans Benefits Administration an Office of
 15 Survivors Assistance (in this section referred to as the ‘Of-
 16 fice’) to provide direct assistance regarding all benefits
 17 and services delivered by the Department—

18 “(1) to survivors and dependents of all deceased
 19 veterans; and

20 “(2) to survivors and dependents of all deceased
 21 members of the Armed Forces.

22 “(b) DUTIES.—The Office shall—

23 “(1) be responsible for ensuring that—

24 “(A) survivors and dependents of deceased
 25 veterans and deceased members of the Armed

1 Forces have access to applicable benefits and
2 services under this title;

3 “(B) programs carried out by the Depart-
4 ment under this title for such survivors and de-
5 pendants are carried out in a manner that is re-
6 sponsive to such survivors and dependents and
7 their unique needs;

8 “(C) regular and consistent monitoring of
9 benefits delivery occurs;

10 “(D) appropriate referrals are being made
11 with respect to such survivors and dependents
12 by, to, and within the Veterans Benefits Admin-
13 istration, Veterans Health Administration, and
14 National Cemetery Administration; and

15 “(E) such survivors and dependents are
16 treated with dignity and respect by personnel of
17 the Department; and

18 “(2) act as a primary advisor to the Secretary
19 on all matters related to the policies, programs, leg-
20 islative issues, and other initiatives affecting such
21 survivors and dependents.

22 “(c) ANNUAL REPORT.—The Secretary shall identify
23 and include the activities of the Office in the annual report
24 to Congress under section 529 of this title.

1 “(d) GUIDANCE FROM STAKEHOLDERS.—In estab-
 2 lishing the Office, the Secretary shall seek guidance from
 3 interested stakeholders, including appropriate employees,
 4 employee representatives, managers, and appropriate pub-
 5 lic and private entities, including veteran service organiza-
 6 tions and other service organizations.

7 “(e) RESOURCES.—The Secretary shall ensure that
 8 appropriate personnel, funding, and other resources are
 9 provided to the Office to carry out its responsibilities.”.

10 (b) CLERICAL AMENDMENT.—The table of sections
 11 at the beginning of such chapter is amended by adding
 12 at the end the following new item:

“321. Office of Survivors Assistance.”.

13 **SEC. 102. STUDY ON READJUSTMENT OF SCHEDULE FOR**
 14 **RATING DISABILITIES.**

15 (a) STUDY ON ADJUSTMENT OF SCHEDULE.—

16 (1) STUDY REQUIRED.—The Secretary of Vet-
 17 erans Affairs shall conduct a study on adjusting the
 18 schedule for rating disabilities adopted and applied
 19 by the Secretary under section 1155 of title 38,
 20 United States Code, so as to base the schedule on
 21 standards, practices, and codes in common use by
 22 the medical, mental health, and disability professions
 23 that are current as of the date of the enactment of
 24 this Act.

1 (2) CONTENTS OF STUDY.—In conducting the
2 study under this subsection, the Secretary shall—

3 (A) determine how the schedule could be
4 adjusted to take into account the loss of quality
5 of life and loss of earnings that result from spe-
6 cific disabilities;

7 (B) examine the nature of the disabilities
8 for which disability compensation is payable
9 under laws other than laws administered by the
10 Secretary;

11 (C) examine whether disparities exist be-
12 tween the rating of physical and mental disabil-
13 ities, especially with respect to how the severity
14 of mental disabilities should be adjudicated to
15 ensure parity with physical disabilities whereby
16 a veteran can be rated totally disabled while
17 maintaining some level of employment;

18 (D) measure the effect of disabilities on
19 the psychological states, physical integrity, and
20 social adaptability of veterans with such disabil-
21 ities; and

22 (E) examine the effect of a veteran's injury
23 or combination of injuries on—

1 (i) the average loss of the veteran's
2 earnings capacity, including the veteran's
3 inability to work in certain occupations;

4 (ii) the veteran's quality of life, in-
5 cluding activities of independent living, rec-
6 reational and community activities, and
7 personal relationships, including the inabil-
8 ity to participate in favorite activities, so-
9 cial problems related to disfigurement or
10 cognitive difficulties, and the need to spend
11 increased amounts of time performing ac-
12 tivities of daily living; and

13 (iii) the extent to which benefits for
14 veterans may be used to encourage vet-
15 erans to seek and undergo vocational reha-
16 bilitation.

17 (3) CONSULTATION.—In conducting the study
18 under this subsection, the Secretary shall consult
19 with appropriate public and private entities, agen-
20 cies, and veterans service organizations, and shall
21 employ consultants.

22 (4) DEADLINE FOR COMPLETION.—The Sec-
23 retary shall complete the study required under this
24 subsection by not later than 180 days after the date
25 of the enactment of this Act.

1 (5) REPORT TO CONGRESS.—Not later than 60
2 days after completing the study required under this
3 subsection, the Secretary shall submit to Congress a
4 report on the study. The report shall include—

5 (A) the results of the study on quality of
6 life and the payment of compensation for serv-
7 ice-connected disabilities for which the Sec-
8 retary entered into a contract on January 28,
9 2008;

10 (B) the Secretary’s findings and conclu-
11 sions with respect to adjusting the schedule for
12 rating disabilities adopted and applied by the
13 Secretary under section 1155 of title 38, United
14 States Code, to account for the loss of quality
15 of life and loss of earnings that result from spe-
16 cific disabilities;

17 (C) the Secretary’s findings and conclu-
18 sions with respect to—

19 (i) the report of the Veterans’ Dis-
20 ability Benefits Commission;

21 (ii) the report of the President’s Com-
22 mission on the Care for America’s Return-
23 ing Wounded Warriors;

24 (iii) the report of the Institute of
25 Medicine entitled “A 21st Century System

1 for Evaluating Veterans for Disability
2 Benefits”; and

3 (iv) any other independent or advisory
4 commission report on matters relating to
5 such schedule that the Secretary deter-
6 mines is appropriate;

7 (D) the Secretary’s recommendations with
8 respect to the appropriate disabilities for inclu-
9 sion in the schedule;

10 (E) the Secretary’s recommendations with
11 respect to the amount of compensation payable
12 to veterans for the loss of quality of life and the
13 basis for such recommendations;

14 (F) the Secretary’s recommendations with
15 respect to the amount of compensation payable
16 to veterans for average loss of earnings capacity
17 and the appropriate standards for determining
18 whether a disability has caused a veteran to
19 incur a loss of earnings capacity;

20 (G) the Secretary’s assessment of the ef-
21 fect of the treatment of mental disabilities
22 under the schedule for rating disabilities, as in
23 effect on the date of the enactment of this Act;
24 and

1 (H) the Secretary's determination with re-
2 spect to whether the regulations prescribed pur-
3 suant to section 1154 of title 38, United States
4 Code, are consistent with providing, to the max-
5 imum extent possible, the benefit of the doubt
6 to veterans covered by that section in the ab-
7 sence of official military records pertaining to
8 the service-connection of a veteran's disability,
9 and in particular, of post-traumatic stress dis-
10 order, when a determination of service-connec-
11 tion would be consistent with the duties, condi-
12 tions, and hardships of service in the Armed
13 Forces.

14 (b) SUBMISSION OF PLAN.—

15 (1) PLAN REQUIRED.—Not later than 120 days
16 after the date on which the Secretary submits the
17 report required under subsection (a)(5), the Sec-
18 retary shall submit to Congress a plan to readjust
19 the schedule for rating disabilities adopted and ap-
20 plied by the Secretary under section 1155 of title 38,
21 United States Code. In developing the plan required
22 under this subsection, the Secretary shall consider
23 the report submitted under subsection (a)(5) and
24 shall provide for the readjustment of such schedule
25 for rating disabilities to—

1 (A) align the schedule with medical con-
2 cepts considered best practices as of the date of
3 the enactment of this Act, including those pro-
4 vided in the Current Procedural Terminology
5 Manual, International Classification of Dis-
6 eases, the Diagnostic and Statistical Manual of
7 Mental Disorders, and applicable American
8 Medical Association Guides;

9 (B) bridge the gap between the schedule,
10 as in effect on the date of the enactment of this
11 Act, and medical understandings, as of such
12 date, of injuries and diseases and the affects of
13 such injuries and diseases on the ability of a
14 person suffering from them to function;

15 (C) prioritize such readjustment with re-
16 spect to post-traumatic stress disorder, other
17 mental disorders, neurological disorders, trau-
18 matic brain injury, orthopedic disabilities, and
19 digestive disabilities;

20 (D) ensure that the schedule is automated
21 in accordance with the review and comprehen-
22 sive plan of the Secretary under section 110 of
23 this Act; and

24 (E) ensure that a transition plan is pro-
25 vided to ease the transition from the schedule

1 for rating disabilities, as in effect on the date
 2 of the enactment of this Act, to the implemen-
 3 tation of the schedule for rating disabilities, as
 4 proposed to be readjusted by the plan under
 5 this subsection.

6 (2) **TIMELINE FOR READJUSTMENT.**—The Sec-
 7 retary shall include in the plan submitted under the
 8 subsection a proposed timeline for when the Sec-
 9 retary intends to readjust the schedule. Such pro-
 10 posed timeline may not exceed three years.

11 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
 12 are authorized to be appropriated such sums as may be
 13 necessary to carry out subsections (a) and (b).

14 (d) **ADVISORY COMMITTEE ON DISABILITY COM-**
 15 **PENSATION.**—

16 (1) **ESTABLISHMENT.**—Subchapter III of chap-
 17 ter 5 of title 38, United States Code, is amended by
 18 adding at the end the following new section:

19 **“§ 546. Advisory Committee on Disability Compensa-**
 20 **tion**

21 “(a) **ESTABLISHMENT.**—(1) There is in the Depart-
 22 ment the Advisory Committee on Disability Compensation
 23 (hereinafter in this section referred to as the ‘Committee’).

1 “(2) The Committee shall consist of not more than
2 18 members appointed by the Secretary from among indi-
3 viduals who—

4 “(A) have demonstrated significant civic or pro-
5 fessional achievement; and

6 “(B) have experience with the provision of dis-
7 ability compensation by the Department or are lead-
8 ing medical or scientific experts in relevant fields.

9 “(3) The Secretary shall seek to ensure that members
10 appointed to the Committee include individuals from a
11 wide variety of geographic areas and ethnic backgrounds,
12 individuals from veterans service organizations, individ-
13 uals with combat experience, and women.

14 “(4) The Secretary shall determine the terms of serv-
15 ice and pay and allowances of the members of the Com-
16 mittee, except that a term of service may not exceed two
17 years. The Secretary may reappoint any member for addi-
18 tional terms of service.

19 “(b) RESPONSIBILITIES OF COMMITTEE.—(1) The
20 Secretary shall, on a regular basis, consult with and seek
21 the advice of the Committee with respect to the mainte-
22 nance and periodic readjustment of the schedule for rating
23 disabilities under section 1155 of this title.

24 “(2)(A) In providing advice to the Secretary under
25 this subsection, the Committee shall—

1 “(i) assemble and review relevant information
2 relating to the needs of veterans with disabilities;

3 “(ii) provide information relating to the nature
4 and character of disabilities arising from service in
5 the Armed Forces;

6 “(iii) provide an on-going assessment of the ef-
7 fectiveness of the schedule for rating disabilities; and

8 “(iv) provide on-going advice on the most ap-
9 propriate means of responding to the needs of vet-
10 erans relating to disability compensation in the fu-
11 ture.

12 “(B) In carrying out its duties under subparagraph
13 (A), the Committee shall take into special account the
14 needs of veterans who have served in a theater of combat
15 operations.

16 “(c) ANNUAL REPORT.—(1) Not later than March 31
17 of each year, the Committee shall submit to the Secretary
18 a report on the programs and activities of the Department
19 that relate to the payment of disability compensation.
20 Each such report shall include—

21 “(A) an assessment of the needs of vet-
22 erans with respect to disability compensation;

23 “(B) a review of the programs and activi-
24 ties of the Department designed to meet such
25 needs; and

1 “(C) such recommendations (including rec-
2 ommendations for administrative and legislative
3 action) as the Committee considers appropriate.

4 “(2) Not later than 90 days after the receipt of a
5 report under paragraph (1), the Secretary shall transmit
6 to the Committees on Veterans’ Affairs of the Senate and
7 House of Representatives a copy of the report, together
8 with any comments and recommendations concerning the
9 report that the Secretary considers appropriate.

10 “(3) The Committee may also submit to the Sec-
11 retary such other reports and recommendations as the
12 Committee considers appropriate.

13 “(4) The Secretary shall submit with each annual re-
14 port submitted to the Congress pursuant to section 529
15 of this title a summary of all reports and recommendations
16 of the Committee submitted to the Secretary since the pre-
17 vious annual report of the Secretary submitted pursuant
18 to that section.

19 “(d) APPLICABILITY OF FEDERAL ADVISORY COM-
20 MITTEE ACT.—(1) Except as provided in paragraph (2),
21 the provisions of the Federal Advisory Committee Act (5
22 U.S.C. App.) shall apply to the activities of the Committee
23 under this section.

24 “(2) Section 14 of such Act shall not apply to the
25 Committee.”.

1 (2) CLERICAL AMENDMENT.—The table of sec-
 2 tions at the beginning of such chapter is amended
 3 by adding at the end of the items relating to sub-
 4 chapter III the following new item:

“546. Advisory Committee on Disability Compensation.”.

5 **SEC. 103. STUDY ON EMPLOYEE WORK CREDIT SYSTEM OF**
 6 **VETERANS BENEFITS ADMINISTRATION.**

7 (a) STUDY REQUIRED.—The Secretary of Veterans
 8 Affairs shall conduct a study on the employee work credit
 9 system of the Veterans Benefits Administration of the De-
 10 partment of Veterans Affairs, which is used to measure
 11 the work production of employees of the Veterans Benefits
 12 Administration.

13 (b) CONTENTS OF STUDY.—In carrying out the study
 14 under subsection (a), the Secretary shall consider the ad-
 15 visability of implementing—

16 (1) performance standards and accountability
 17 measures to ensure that—

18 (A) claims for benefits under the laws ad-
 19 ministered by the Secretary are processed in an
 20 objective, accurate, consistent, and efficient
 21 manner; and

22 (B) final decisions with respect to such
 23 claims are consistent and issued within the av-
 24 erage amount of time required to process a
 25 claim, as identified by the Secretary in the most

1 recent annual report submitted by the Secretary
2 under section 7734 of title 38, United States
3 Code;

4 (2) guidelines and procedures for the prompt
5 processing of such claims that are ready to rate
6 upon submission;

7 (3) guidelines and procedures for the processing
8 of such claims submitted by severely injured and
9 very severely injured veterans, as determined by the
10 Secretary; and

11 (4) requirements for assessments of claims
12 processing at each regional office for the purpose of
13 producing lessons learned and best practices.

14 (c) REPORT TO CONGRESS.—Not later than 180 days
15 after the date of the enactment of this Act, the Secretary
16 shall submit to Congress a report on the study conducted
17 under this section and the progress of the Secretary in
18 implementing the new system for evaluating employees of
19 the Veterans Benefits Administration required under sub-
20 section (d).

21 (d) EVALUATION OF VETERANS BENEFITS ADMINIS-
22 TRATION EMPLOYEES.—

23 (1) NEW SYSTEM REQUIRED.—By not later
24 than 180 days after the date on which the Secretary
25 of Veterans Affairs submits to Congress the report

1 required under subsection (d), the Secretary shall es-
2 tablish a new system for evaluating the work produc-
3 tion of employees of the Veterans Benefits Adminis-
4 tration. Such system shall—

5 (A) be based on the findings of the study
6 conducted by the Secretary under this section;

7 (B) focus on evaluating the accuracy and
8 quality of ratings decisions made by such em-
9 ployees; and

10 (C) not resemble or be based on any con-
11 cept on which the system in effect as of the
12 date of the enactment of this Act is based.

13 (2) SUSPENSION OF AWARD OF WORK CRED-
14 ITS.—If the Secretary of Veterans Affairs does not
15 implement the new system for evaluating work pro-
16 duction as required under paragraph (1), the Sec-
17 retary may not award a work credit to any employee
18 of the Veterans Benefits Administration until the
19 Secretary has implemented such system.

20 **SEC. 104. STUDY ON WORK MANAGEMENT SYSTEM.**

21 (a) IN GENERAL.—The Secretary of Veterans Affairs
22 shall conduct a study on the work management system
23 of the Veterans Benefits Administration of the Depart-
24 ment of Veterans Affairs, which is designed to improve
25 accountability, quality, and accuracy, and reduce the time

1 for processing claims for benefits under laws administered
2 by the Secretary that are adjudicated by the Veterans
3 Benefits Administration.

4 (b) CONTENTS OF STUDY.—In conducting the study
5 required under subsection (a), the Secretary shall con-
6 sider—

7 (1) accountability for claims adjudication out-
8 comes;

9 (2) the quality of claims adjudicated;

10 (3) a simplified process to adjudicate claims;

11 (4) the maximum use of information technology
12 applications;

13 (5) rules-based applications and tools for proc-
14 essing and adjudicating claims efficiently and effec-
15 tively; and

16 (6) methods of reducing the time required to
17 obtain information from outside sources.

18 (c) REPORT TO CONGRESS.—Not later than 180 days
19 after the date of the enactment of this Act, the Secretary
20 shall submit to Congress a report on the study conducted
21 under this section.

22 **SEC. 105. CERTIFICATION AND TRAINING OF EMPLOYEES**
23 **OF VETERANS BENEFITS ADMINISTRATION**
24 **RESPONSIBLE FOR PROCESSING CLAIMS.**

25 (a) EMPLOYEE CERTIFICATION REQUIRED.—

1 (1) IN GENERAL.—Subchapter II of chapter 77
2 of title 38, United States Code, is amended by add-
3 ing at the end the following new section:

4 **“§ 7735. Employee certification**

5 “(a) DEVELOPMENT OF CERTIFICATION EXAMINA-
6 TION.—The Secretary shall develop a certification exam-
7 ination for appropriate employees and managers of the
8 Veterans Benefits Administration who are responsible for
9 processing claims for benefits under the laws administered
10 by the Secretary. The Secretary shall develop such exam-
11 ination in consultation with examination development ex-
12 perts, interested stakeholders, including such appropriate
13 employees, employee representatives, and managers, and
14 appropriate public and private entities, including veterans
15 service organizations and other service organizations.

16 “(b) EMPLOYEE AND MANAGER REQUIREMENT.—
17 The Secretary shall require appropriate employees and
18 managers of the Veterans Benefits Administration who
19 are responsible for processing claims for benefits under
20 the laws administered by the Secretary to take a certifi-
21 cation examination.

22 “(c) LIMITATION.—The Secretary may not satisfy
23 any requirement of this section through the use of any
24 certification examination or program that exists as of the

1 date of the enactment of the Veterans Disability Benefits
2 Claims Modernization Act of 2008.’’.

3 (2) DEADLINES FOR IMPLEMENTATION.—The
4 Secretary of Veterans Affairs shall—

5 (A) develop the certification examination
6 required to be developed under section 7735 of
7 title 38, United States Code, as added by sub-
8 section (a), by not later than one year after the
9 date of the enactment of this Act; and

10 (B) implement procedures for admin-
11 istering the certification of employees under
12 such section and begin administering the certifi-
13 cation examination required under such section
14 by not later than 90 days after the date on
15 which the development of such certification ex-
16 amination is complete.

17 (3) CLERICAL AMENDMENT.—The table of sec-
18 tions at the beginning of such chapter is amended
19 by adding at the end of the items relating to sub-
20 chapter II the following new item:

“7735. Employee certification.”.

21 (b) EVALUATION OF TRAINING.—

22 (1) EVALUATION REQUIRED.—The Secretary of
23 Veterans Affairs shall enter into a contract with a
24 private entity with experience evaluating training
25 processes, continuing education needs, and central-

1 ized training requirements, under which that entity
2 shall—

3 (A) conduct an evaluation of the items re-
4 quired to be included in the annual report of
5 the Secretary under section 7734 of title 38,
6 United States Code, that were included in the
7 last such report submitted before the date of
8 the enactment of this Act, that relate to the
9 training and performance assessment programs
10 of the Department of Veterans Affairs for em-
11 ployees of the Veterans Benefits Administration
12 who are responsible for matters relating to com-
13 pensation or pension benefits under the laws
14 administered by the Secretary; and

15 (B) not later than 180 days after the date
16 of the enactment of this Act, submit to the Sec-
17 retary the results of such evaluation.

18 (2) SUBMISSION OF RESULTS TO CONGRESS.—

19 The Secretary shall include the results of the evalua-
20 tion required under paragraph (1) with the first an-
21 nual report required to be submitted to Congress
22 under section 529 of title 38, United States Code,
23 submitted after the date on which the Secretary re-
24 ceives such results.

1 (3) REPORT.—Not later than 180 days after
2 the date on which the Secretary submits the report
3 referred to in paragraph (2), the Secretary shall
4 submit to Congress a report on any actions the Sec-
5 retary has taken or plans to take in response to the
6 results of the evaluation required under paragraph
7 (1).

8 **SEC. 106. ANNUAL ASSESSMENT OF QUALITY ASSURANCE**
9 **PROGRAM.**

10 (a) ANNUAL ASSESSMENT REQUIRED.—Section 7731
11 of title 38, United States Code, is amended by adding at
12 the end the following new subsection:

13 “(c)(1) The Secretary shall enter into a contract with
14 an independent third-party entity for the conduct of an
15 annual assessment of the quality assurance program
16 under this section. Each such assessment shall—

17 “(A) evaluate a statistically valid sample of em-
18 ployees of the Veterans Benefits Administration and
19 a statistically valid sample of the work product of
20 such employees to assess the quality and accuracy of
21 such work product;

22 “(B) measure the performance of each regional
23 office of the Veterans Benefits Administration;

1 “(C) measure the accuracy of the disability rat-
2 ings assigned under the schedule for rating disabil-
3 ities under section 1155 of this title;

4 “(D) compare disability ratings and evaluate
5 consistency between regional offices;

6 “(E) assess the performance of employees and
7 managers of the Veterans Benefits Administration;
8 and

9 “(F) produce automated categorizable data to
10 help identify trends.

11 “(2) The Secretary shall use information gathered
12 through the annual assessments required under this sec-
13 tion in developing the employee certification required
14 under section 7735 of this title.

15 “(3) In order to carry out the quality assurance pro-
16 gram under this subsection with respect to the administra-
17 tion of disability compensation and to reduce the variances
18 between ratings in the regional offices of the Department,
19 the Secretary shall ensure the accuracy and consistency
20 across different offices within the Department of the treat-
21 ment of claims for disability compensation, including de-
22 terminations with respect to disability ratings and whether
23 a disability is service-connected.

24 “(4)(A) The Secretary shall retain, monitor, and
25 store in an accessible format data described in subpara-

1 graph (B), including development of a demographic base-
2 line.

3 “(B) The data covered by this paragraph includes the
4 following:

5 “(i) For each claim for disability compensation
6 under laws administered by the Secretary submitted
7 by a claimant—

8 “(I) the State in which the claimant re-
9 sided when the claim was submitted;

10 “(II) the decision of the Secretary with re-
11 spect to the claim;

12 “(III) the regional office and individual
13 employee of the Department responsible for
14 evaluating the claim; and

15 “(IV) the sex and race of the claimant.

16 “(ii) The State of the claimant’s residence.

17 “(iii) Such other data as the Secretary deter-
18 mines is appropriate for monitoring the accuracy
19 and consistency of decisions with respect to such
20 claims.

21 “(5) Nothing in this subsection shall require the Sec-
22 retary to replace the quality assurance program under this
23 section, as in effect on the date of the enactment of the
24 Veterans Disability Benefits Claims Modernization Act of
25 2008.”.

1 (b) REPORT TO CONGRESS.—Section 7734 of such
2 title is amended—

3 (1) in paragraph (2), by striking “and” at the
4 end;

5 (2) by redesignating paragraph (3) as para-
6 graph (4); and

7 (3) by inserting after paragraph (2) the fol-
8 lowing new paragraph (3):

9 “(3) the results and findings of the most recent
10 annual assessment conducted under section 7731(c)
11 of this title; and”.

12 **SEC. 107. EXPEDITED TREATMENT OF FULLY DEVELOPED**
13 **CLAIMS AND REQUIREMENT FOR CHECKLIST**
14 **TO BE PROVIDED TO INDIVIDUALS SUBMIT-**
15 **TING INCOMPLETE CLAIMS.**

16 (a) EXPEDITED TREATMENT OF FULLY DEVELOPED
17 CLAIMS.—

18 (1) IN GENERAL.—Subchapter I of chapter 51
19 of title 38, United States Code, is amended by add-
20 ing at the end the following new section:

21 **“§ 5109C. Expedited treatment of fully developed**
22 **claims**

23 “(a) EXPEDITED TREATMENT REQUIRED.—The Sec-
24 retary shall take such actions as may be necessary to pro-
25 vide for the expeditious treatment by the appropriate re-

1 gional office of the Veterans Benefits Administration of
2 any fully developed claim to ensure that any such claim
3 is adjudicated not later than 90 days after the date on
4 which the claim is submitted.

5 “(b) NOTICE OF REQUIRED INFORMATION AND EVI-
6 DENCE.—Nothing in this section shall affect the responsi-
7 bility of the Secretary to provide notice under section 5103
8 to a claimant and a claimant’s representative of required
9 information and evidence that is necessary to substantiate
10 a fully developed claim.

11 “(c) FULLY DEVELOPED CLAIM DEFINED.—For
12 purposes of this section, the term ‘fully developed claim’
13 means a claim for a benefit under a law administered by
14 the Secretary—

15 “(1) for which the claimant—

16 “(A) received assistance from a veterans
17 service officer, a State or county veterans serv-
18 ice officer, an agent, or an attorney; or

19 “(B) submits along with the claim an ap-
20 propriate indication that the claimant does not
21 intend to submit any additional information in
22 support of the claim and does not require addi-
23 tional assistance with respect to the claim; and

24 “(2) for which the claimant submits a certifi-
25 cation in writing that is signed by the claimant stat-

1 ing that at the time of signature, no additional in-
 2 formation is available or needs to be submitted in
 3 order for the claim to be adjudicated.”.

4 (2) CLERICAL AMENDMENT.—The table of sec-
 5 tions at the beginning of such chapter is amended
 6 by adding at the end of the items relating to sub-
 7 chapter I the following new item:

“5109C. Expedited treatment of fully developed claims.”.

8 (3) DEADLINES FOR IMPLEMENTATION.—By
 9 not later than 180 days after the date of the enact-
 10 ment of this Act, the Secretary of Veterans Affairs
 11 shall establish a process for expediting claims under
 12 section 5109C of title 38, United States Code, as
 13 added by paragraph (1).

14 (b) PROVISION OF CHECKLIST TO INDIVIDUALS SUB-
 15 MITTING INCOMPLETE CLAIMS.—

16 (1) CHECKLIST.—Section 5103 of title 38,
 17 United States Code, is amended—

18 (A) by redesignating subsection (b) as sub-
 19 section (c); and

20 (B) by inserting after subsection (a) the
 21 following new subsection (b):

22 “(b) PROVISION OF CHECKLIST.—In providing notice
 23 of required information and evidence to a claimant and
 24 a claimant’s representative, if any, under subsection (a),
 25 the Secretary shall provide to the claimant and any such

1 representative a checklist that includes a detailed descrip-
 2 tion of information or evidence required to be submitted
 3 by the claimant to substantiate the claim.”.

4 (2) EFFECTIVE DATE.—Subsection (b) of sec-
 5 tion 5103 of title 38, United States Code, as added
 6 by paragraph (1) shall apply with respect to notice
 7 provided after the date that is one year after the
 8 date of the enactment of this Act.

9 (3) DEADLINE FOR CREATION OF CHECK-
 10 LIST.—By not later than 180 days after the date of
 11 the enactment of this Act, the Secretary of Veterans
 12 Affairs shall create the checklist required under such
 13 subsection, as so added.

14 (4) SUBMITTAL TO CONGRESS.—Not later than
 15 60 days after the Secretary creates the checklist re-
 16 quired by such subsection, as so added, the Sec-
 17 retary shall submit to Congress the checklist.

18 **SEC. 108. STUDY AND REPORT ON EMPLOYING MEDICAL**
 19 **PROFESSIONALS TO ASSIST EMPLOYEES OF**
 20 **VETERANS BENEFITS ADMINISTRATION.**

21 (a) STUDY.—The Secretary of Veterans Affairs shall
 22 conduct a study to evaluate the need of the Veterans Ben-
 23 efits Administration of the Department of Veterans Af-
 24 fairs to employ, in addition to medical professionals of the
 25 Veterans Health Administration, including medical profes-

1 sionals who are not physicians, to act as a medical ref-
2 erence for employees of the Administration so that such
3 employees may accurately assess medical evidence sub-
4 mitted in support of claims for benefits under laws admin-
5 istered by the Secretary. In no case shall any such medical
6 professional be employed to rate any disability or evaluate
7 any claim. In conducting the study, the Secretary shall
8 conduct statistically significant surveys of employees of
9 the Administration to ascertain whether, how, and to what
10 degree medical professionals could provide assistance to
11 such employees.

12 (b) REPORT TO CONGRESS.—Not later than 180 days
13 after the date of the enactment of this Act, the Secretary
14 shall submit to Congress a report on the study conducted
15 under subsection (a).

16 (c) ACCESS TO MEDICAL PROFESSIONALS.—If the
17 Secretary hires medical professionals pursuant to the
18 study conducted under this section, the Secretary shall en-
19 sure that employees employed by all regional offices of the
20 Veterans Benefits Administration have access to such
21 medical professionals.

1 **SEC. 109. ASSIGNMENT OF PARTIAL DISABILITY RATINGS**
2 **TO QUALIFYING VETERANS.**

3 (a) IN GENERAL.—Chapter 11 of title 38, United
4 States Code, is amended by inserting after section 1155
5 the following new section:

6 **“§ 1156. Partial disability ratings**

7 “(a) ASSIGNMENT OF PARTIAL RATINGS.—For the
8 purpose of providing disability compensation under this
9 chapter to a qualifying veteran, the Secretary shall assign
10 a partial disability rating to the veteran as follows:

11 “(1) In the case of a qualifying veteran de-
12 scribed in subsection (b)(3)(A), a rating of 100 per-
13 cent.

14 “(2) In the case of a qualifying veteran de-
15 scribed in subsection (b)(3)(B), a rating of 50 per-
16 cent.

17 “(b) QUALIFYING VETERAN.—For the purposes of
18 this section, a qualifying veteran is a veteran—

19 “(1) who has been discharged from active duty
20 service for 365 days or less;

21 “(2) for whom a permanent disability rating is
22 not immediately assignable under the regular provi-
23 sions of the schedule for rating disabilities under
24 section 1155 of this title or on the basis of indi-
25 vidual unemployability; and

26 “(3) who has—

1 “(A) a severe disability for whom substan-
2 tially gainful employment is not feasible or ad-
3 visable; or

4 “(B) a wound or injury, whether healed,
5 unhealed or incompletely healed for whom ma-
6 terial impairment of employability is likely.

7 “(c) EXAMINATIONS.—A medical examination of a
8 qualifying veteran is not required to be performed before
9 assigning a partial disability rating to the veteran under
10 this section, but the fact that such an examination is con-
11 ducted shall not prevent the Secretary from assigning such
12 a rating.

13 “(d) TERMINATION OF PARTIAL RATING.—(1) Ex-
14 cept as provided in paragraph (2), a partial disability rat-
15 ing assigned to a veteran under this section shall remain
16 in effect until the earlier of the following dates:

17 “(A) The date on which the veteran receives a
18 permanent disability rating based on the schedule
19 for rating disabilities under section 1155 of this
20 title.

21 “(B) The date that is 365 days after the date
22 of the veteran’s last separation or release from ac-
23 tive duty.

24 “(2) The Secretary may extend a partial disability
25 rating assigned to a veteran under this section beyond the

1 applicable termination date under paragraph (1), if the
2 Secretary determines that such an extension is appro-
3 priate.”.

4 (b) EFFECTIVE DATE.—Section 1156 of title 38,
5 United States Code, as added by paragraph (1), shall take
6 effect on the date of the enactment of this Act.

7 (c) CLERICAL AMENDMENT.—The table of sections
8 at the beginning of such chapter is amended by inserting
9 after the item relating to section 1155 the following new
10 item:

“1156. Partial disability ratings.”.

11 **SEC. 110. REVIEW AND ENHANCEMENT OF USE OF INFOR-**
12 **MATION TECHNOLOGY AT VETERANS BENE-**
13 **FITS ADMINISTRATION.**

14 (a) REVIEW AND COMPREHENSIVE PLAN.—By not
15 later than one year after the date of the enactment of this
16 Act, the Secretary of Veterans Affairs shall conduct a re-
17 view of the use of information technology at the Veterans
18 Benefits Administration and develop a comprehensive plan
19 for the use of such technology in processing claims for
20 benefits under laws administered by the Secretary of Vet-
21 erans Affairs that would reduce subjectivity, avoidable re-
22 mands, and regional office variances in disability ratings.

23 (b) INFORMATION TECHNOLOGY.—The plan devel-
24 oped under subsection (a) shall include—

1 (1) the use of rules-based processing and infor-
2 mation technology systems and automated decision
3 support software at all levels of processing claims;

4 (2) the enhancement of the use of information
5 technology for all aspects of the claims process;

6 (3) a technological platform that allows for the
7 use of information that members of the Armed
8 Forces, veterans, and dependents have submitted
9 electronically, including uploaded military records,
10 medical evidence, and other appropriate documenta-
11 tion, and the capability to view applications for bene-
12 fits submitted online;

13 (4) the use of electronic examination templates
14 in conjunction with the schedule for rating disabil-
15 ities under section 1155 of title 38, United States
16 Code;

17 (5) making such changes as may be required to
18 the information technology system of the Depart-
19 ment so as to ensure that users of such system are
20 able to access the service medical records of the De-
21 partment of Defense by not later than one year after
22 the date on which the plan is implemented;

23 (6) the provision of bi-directional access to med-
24 ical records and service records between the Depart-

1 ment of Veterans Affairs and the Department of De-
2 fense; and

3 (7) the availability, on the Internet website of
4 the Department, of a mechanism that can be used
5 by a claimant to check on the status of any claim
6 submitted by that claimant and that provides infor-
7 mation on—

8 (A) whether a decision has been reached
9 with respect to such a claim, notice of the deci-
10 sion; or

11 (B) if no such decision has been reached,
12 notice of—

13 (i) whether the application submitted
14 by the claimant is complete;

15 (ii) whether the Secretary requires ad-
16 ditional information or evidence to process
17 the claim;

18 (iii) the estimated date on which a de-
19 cision with respect to the claim is expected
20 to be made; and

21 (iv) the stage at which the claim is
22 being processed as of the date on which
23 such status is checked.

24 (c) REVIEW OF BEST PRACTICES AND LESSONS
25 LEARNED.—In carrying out this section, the Secretary

1 shall review best practices and lessons learned within the
2 Department of Veterans Affairs and the use of the tech-
3 nology known as “VistA” by other Government entities
4 and private sector organizations who employ information
5 technology and automated decision support software

6 (d) REDUCTION OF CLAIMS PROCESSING TIME.—In
7 carrying out this section, the Secretary shall ensure that
8 a plan is developed that, within three years of implementa-
9 tion, would reduce the processing time for each claim proc-
10 essed by the Veterans Benefits Administration to not
11 longer than the average amount of time to required to
12 process a claim, as identified by the Secretary in the most
13 recent annual report submitted by the Secretary under
14 section 7734 of title 38, United States Code.

15 (e) CONSULTATION.—In carrying out this section, the
16 Secretary of Veterans Affairs shall consult with informa-
17 tion technology designers at the Veterans Health Adminis-
18 tration, VistA managers, the Secretary of Defense, appro-
19 priate officials of other Government agencies, appropriate
20 individuals in the private and public sectors, veterans serv-
21 ice organizations, and other relevant service organizations.

22 (f) REPORT TO CONGRESS.—By not later than Janu-
23 ary 1, 2009, the Secretary shall submit to Congress a re-
24 port on the review and comprehensive plan required under
25 this section.

1 **SEC. 111. TREATMENT OF CLAIMS UPON DEATH OF CLAIM-**
2 **ANT.**

3 (a) TREATMENT OF BENEFICIARY OF VETERAN'S
4 ACCRUED BENEFITS AS CLAIMANT FOR PURPOSES OF IN-
5 COMPLETE CLAIMS UPON DEATH OF VETERAN.—Chapter
6 51 of title 38, United States Code, is amended by inserting
7 after section 5121 the following new section:

8 **“§ 5121A. Substitution in case of death of claimant**

9 “(a) SUBSTITUTION.—If a veteran who is a claimant
10 dies while a claim for any benefit under a law administered
11 by the Secretary, or an appeal of a decision with respect
12 to such a claim, is pending and awaiting adjudication, the
13 person who would receive any accrued benefits due to the
14 veteran under section 5121(a)(2) of this title shall be
15 treated as the claimant for the purposes of processing the
16 claim to completion, except that such person may only
17 submit new evidence in support of the claim during the
18 one-year period beginning on the date of the death of the
19 veteran.

20 “(b) LIMITATION.—Only one person may be treated
21 as the claimant under subsection (a).

22 “(c) DESIGNATION OF THIRD PARTY.—If the person
23 who would be eligible to be treated as the claimant under
24 subsection (a) certifies to the Secretary that the person
25 does not want to be treated as the claimant for such pur-
26 poses, such person may designate the person who would

1 receive the benefits under section 5121(a)(2) upon the
 2 death of the person who would otherwise be treated as
 3 the claimant under subsection (a) to be treated as the
 4 claimant for the purposes of processing the claim to com-
 5 pletion.”.

6 (b) CLERICAL AMENDMENT.—The table of sections
 7 at the beginning of such chapter is amended by inserting
 8 after the item relating to section 5121 the following new
 9 item:

“5121A. Death of claimant.”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply with respect to the claim of any
 12 veteran who dies on or after the date of the enactment
 13 of this Act.

14 **TITLE II—MATTERS RELATING** 15 **TO UNITED STATES COURT** 16 **OF APPEALS FOR VETERANS** 17 **CLAIMS**

18 **SEC. 201. ANNUAL REPORTS ON WORKLOAD OF UNITED** 19 **STATES COURT OF APPEALS FOR VETERANS** 20 **CLAIMS.**

21 (a) IN GENERAL.—Subchapter III of chapter 72 of
 22 title 38, United States Code, is amended by adding at the
 23 end the following new section:

1 **“§ 7288. Annual report**

2 “The chief judge of the Court shall annually submit
3 to the Committee on Veterans’ Affairs of the Senate and
4 the Committee on Veterans’ Affairs of the House of Rep-
5 resentatives a report summarizing the workload of the
6 Court during the last fiscal year that ended before the sub-
7 mission of such report. Such report shall include, with re-
8 spect to such fiscal year, the following information:

9 “(1) The number of appeals filed.

10 “(2) The number of petitions filed.

11 “(3) The number of applications filed under
12 section 2412 of title 28.

13 “(4) The number and type of dispositions, in-
14 cluding settlements.

15 “(5) The median time from filing to disposition.

16 “(6) The number of oral arguments.

17 “(7) The number and status of pending appeals
18 and petitions and of applications described in para-
19 graph (3).

20 “(8) A summary of any service performed by
21 recalled retired judges during the fiscal year.

22 “(9) The number of decisions or dispositions
23 rendered by a single judge, multi-judge panels and
24 the full Court.

25 “(10) The number of cases pending longer than
26 18 months.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 at the beginning of such chapter is amended by inserting
3 after the item related to section 7287 the following new
4 item:

“7288. Annual report.”.

5 **SEC. 202. MODIFICATION OF JURISDICTION AND FINALITY**
6 **OF DECISIONS OF UNITED STATES COURT OF**
7 **APPEALS FOR VETERANS CLAIMS.**

8 (a) MODIFICATION.—Section 7252(a) of title 38,
9 United States Code, is amended—

10 (1) by striking the third sentence; and

11 (2) by adding at the end the following new sen-
12 tence: “The Court shall have power to affirm, mod-
13 ify, reverse, remand, or vacate and remand a deci-
14 sion of the Board after deciding all relevant assign-
15 ments of error raised by an appellant for each par-
16 ticular claim for benefits. In a case in which the
17 Court reverses a decision on the merits of a par-
18 ticular claim and orders an award of benefits, the
19 Court need not decide any additional assignments of
20 error with respect to that claim.”

21 (b) EFFECTIVE DATE.—The amendments made by
22 subsection (a) shall apply with respect to a decision of the

- 1 Board of Veterans' Appeals made on or after the date of
- 2 the enactment of this Act.

Passed the House of Representatives July 30, 2008.

Attest: LORRAINE C. MILLER,
Clerk.